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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/818,786

03/28/2001

Jacob M. Christensen

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09/07/2005

John F. Kacvinsky
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
12400 Wilshire Blvd Seventh Floor
Los Angeles, CA 90025

EXAMINER

SAM, PHIRIN

ART UNIT

PAPER NUMBER

2661

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/818,786

Applicant(s)

CHRISTENSEN ET AL.

Examiner

Phirin Sam

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-25 is/are allowed.
- 6) ☒ Claim(s) 1,3,5 and 7 is/are rejected.
- 7) ☒ Claim(s) 2,4,6,8 and 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


PHIRIN SAM
PRIMARY EXAMINER

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1, 3, 5, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,658,499 (hereinafter referred as "Day") in view of US Patent 6,667,991 (hereinafter referred as "Tzannes").

Day discloses the invention (**amended claims 1, 3, 5, and 7**) as claimed including a system, comprising:

(a) a customer premise equipment for establishing a DSL connection via a copper line, the customer premise equipment connecting to the copper line (see Fig. 3, elements 302, and 306, col. 5, lines 54-55);

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(b) a DSL access multiplexer, connecting to said copper line, for establishing said DSL connection with said customer premise equipment via said copper line, said DSL connection being established between said customer premise equipment and said DSL access multiplexer (see Fig. 3, element 102, col. 5, lines 55-58) with a dynamic transmission rate negotiated at initialization time based on characteristics of a transmission environment during the initialization time (see Fig. 3, col. 6, lines 63-67);

(c) a DSL connection optimizer for adaptively optimizing the transmission rate between said customer premise equipment and said DSL access multiplexer (see Figs. 3, 4 and 6, element 302 and 400, col. 8, lines 10-39, col. 13, lines 58-67, and col. 14, lines 1-28);

Day does not disclose re-initializing the DSL connection based on varying characteristics of the transmission environment. However, Tzannes discloses re-initializing the DSL connection based on varying characteristics of the transmission environment (see Figs. 2 and 4, col. 5, lines 32-40, and col. 10, lines 31-39). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine re-initializing the DSL connection based on varying characteristics of the transmission environment teaching by Tzannes with Day. The motivation for doing so would have been to provide an error free link read on column 10, line 37. Therefore, it would have been obvious to combine Tzannes and Day to obtain the invention as specified in the claims 1, 3, 5, and 7.

Allowable Subject Matter

4. Claims 10-25 are allowed.

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5. Claims 2, 4, 6, 8, and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments with respect to claims 1, 3, 5, and 7 have been considered but are moot in view of the new ground(s) of rejection.

For proper response to the amended claims, the examiner decides to drop the reference(s), Wetzel (U.S. Patent 6,388,990), Lu et al (US Patent 6,351,487) and substitutes with Tzannes (U.S. Patent 6,667,991), Day et al. (US Patent 6,658,499) which are new discovered references. Therefore, the new ground of rejection is applied as set forth in the Office Action.

Regarding amended claims 1, 3, and 7, applicants argue that references Wetzel fails to teach, "establishing a DSL connection . . . with a dynamic transmission rate negotiated at initialization time based on characteristics of a transmission environment during the initialization time . . . and . . . re-initializing said DSL connection based on varying characteristics of the transmission environment"; and

Regarding amended claim 5, applicants argue that Wetzel also fails to teach, "establishing a DSL connection . . . with a dynamic transmission rate negotiated at initialization time based on characteristics of a transmission environment during the initialization time . . . and . . . re-establishing said DSL connection . . . based on varying characteristics of the transmission environment".

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The examiner agrees with the applicants that Wetzel fails to teach some features of these amended claims 1, 3, 5, and 7. However, references Tzannes and Day et al disclose all these limitations as lay out under the rejections above.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phirin Sam whose telephone number is (571) 272-3082. The examiner can normally be reached on Mon-Fri, 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on (571) 272 - 3126. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully submitted,

Date: August 31, 2005

A handwritten signature in black ink, appearing to read 'Phirin Sam', written over a horizontal line.

PHIRIN SAM
PRIMARY EXAMINER